

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)) CASE NO. 22-56501-pmb
))
CUREPOINT, LLC)) Chapter 11
))
Debtor.))
))

DAVID A. WENDER, in his capacity as)
CHAPTER 11 TRUSTEE,)
)
Plaintiff,)
)
v.)) Adv. Proc. No. 22-05171-pmb
)
CLG SERVICING LLC,)
)
Defendant.))

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Defendant, CLG Servicing, LLC (“CLG”), by and through its undersigned counsel, for its Answer to the Complaint and Affirmative Defenses states as follows:

PARTIES, JURISDICTION AND VENUE

1. CLG admits the allegations in Paragraph 1 of the Complaint.
2. CLG admits the allegations in Paragraph 2 of the Complaint.
3. CLG admits the allegations in Paragraph 3 of the Complaint.
4. CLG is without information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint.
5. CLG admits the allegations in Paragraph 5 of the Complaint.
6. CLG admits the allegations in Paragraph 6 of the Complaint.

7. CLG admits the allegations in Paragraph 7 of the Complaint.
8. CLG admits the allegations in Paragraph 8 of the Complaint.
9. CLG admits the allegations in Paragraph 9 of the Complaint.

FACTUAL BACKGROUND

10. CLG admits the allegations in Paragraph 10 of the Complaint.
11. CLG admits the allegations in Paragraph 11 of the Complaint.
12. CLG admits the allegations in Paragraph 12 of the Complaint.
13. CLG admits the allegations in Paragraph 13 of the Complaint to the extent that CLG attached two (2) agreements to the proof of claim. CLG denies the allegations in Paragraph 13 of the Complaint to the extent that CLG is in the process of filing an amended claim with further agreements in support of the proof of claim and secured status.
14. CLG admits the allegations in Paragraph 14 of the Complaint.
15. CLG admits the allegations in Paragraph 15 of the Complaint to the extent that the Plaintiff recites terms of the original Promissory Note between the Debtor and CLG.
16. CLG admits the allegations in Paragraph 16 of the Complaint to the extent that the allegations recite the terms of promissory note given by the Debtor in favor of CLG and dated October 8, 2021.
17. CLG denies the allegations in Paragraph 17 of the Complaint.
18. CLG denies the allegations in Paragraph 18 of the Complaint.
19. CLG denies the allegations in Paragraph 19 of the Complaint.
20. CLG denies the allegations in Paragraph 20 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.
21. CLG denies the allegations in Paragraph 20 of the Complaint.

22. CLG admits the allegations in Paragraph 22 of the Complaint.
23. CLG admits the allegations in Paragraph 22 of the Complaint to the extent that the allegations recite the terms of a Collateral Assignment of Membership Interest dated July 16, 2020.
24. CLG denies the allegations in Paragraph 24 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.
25. CLG denies the allegations in Paragraph 25 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.
26. CLG denies the allegations in Paragraph 26 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.
27. CLG denies the allegations in Paragraph 27 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.
28. CLG denies the allegations in Paragraph 28 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.
29. CLG admits the allegations in Paragraph 29 of the Complaint.
30. CLG is without information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint.

COUNT I—DECLARATORY JUDGMENT

31. CLG incorporates by reference each of its answers to the foregoing paragraphs as if fully set forth herein.
32. Paragraph 32 of the Complaint consists of a legal conclusion to which no response is required.
33. CLG admits the allegations in Paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint consists of a legal conclusion to which no response is required.

35. CLG denies the allegations in Paragraph 35 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.

36. CLG denies the allegations in Paragraph 36 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.

37. CLG denies the allegations in Paragraph 37 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.

38. CLG denies the allegations in Paragraph 38 of the Complaint.

39. CLG denies the allegations in Paragraph 39 of the Complaint.

COUNT II—OBJECTION TO CLAIM

40. CLG incorporates by reference each of its answers to the foregoing paragraphs as if fully set forth herein.

41. CLG denies the allegations in Paragraph 39 of the Complaint to the extent that Plaintiff asserts that the factual allegations are a basis for the relief sought in the Complaint.

42. CLG admits the allegations in Paragraph 42 of the Complaint.

43. CLG denies the allegations in Paragraph 43 of the Complaint.

44. CLG denies the allegations in Paragraph 44 of the Complaint.

WHEREFORE, CLG respectfully requests that this Honorable Court dismiss this action and/or deny the relief requested and grant such other and further relief as this Court deems just and proper considering the facts and circumstances of this case.

AFFIRMATIVE DEFENSES

1. On November 22, 2022, the Bankruptcy Court entered an Order and Notice Establishing Bar Date Fixing Time for Filing Prepetition Claims which required that all creditors or parties-in-interest file claims on or before January 31, 2023. CLG has the right to amend its filed proof of claim pursuant to the Court's Order and shall file such claim in a manner to deny all relief sought by the Trustee.

2. The Trustee has failed to state a claim upon which relief can be granted because, among other issues, declaratory relief is dependent upon a substantive basis for liability and has no viability if there is no underlying cause of action on which the request for declaratory relief is based. *See, e.g., Lowe v. Ingalls Shipbuilding, A Div. of Litton Sys., Inc.*, 723 F.2d 1173, 1179 (5th Cir. 1984) ("The federal Declaratory Judgment Act, 28 U.S.C. §2201, is procedural only, not substantive....). Here there is no underlying cause of action on which the declaratory relief claim is based.

Respectfully submitted this 19th day of January 2023.

[Signature on Following Page]

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